

Article 10.

Mortgage Debt Collection and Servicing.

**§ 45-90. Definitions.**

As used in this Article, the following definitions apply:

- (1) Home loan. – A loan secured by real property located in this State used, or intended to be used, by an individual borrower or individual borrowers in this State as a dwelling, regardless of whether the loan is used to purchase the property or refinance the prior purchase of the property or whether the proceeds of the loan are used for personal, family, or business purposes.
- (2) Servicer. – A "servicer" as defined in the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(i). A licensed attorney, who in the practice of law or performing as a trustee, accepts payments related to a loan closing, default, foreclosure, or settlement of a dispute or legal claim related to a loan, shall not be considered a servicer for the purposes of this Article. (2007-351, s. 5.)

**§ 45-91. Assessment of fees; processing of payments; publication of statements.**

A servicer must comply as to every home loan, regardless of whether the loan is considered in default or the borrower is in bankruptcy or the borrower has been in bankruptcy, with the following requirements:

- (1) Any fee that is incurred by a servicer shall be both:
  - a. Assessed within 45 days of the date on which the fee was incurred. Provided, however, that attorney or trustee fees and costs incurred as a result of a foreclosure action shall be assessed within 45 days of the date they are charged by either the attorney or trustee to the servicer.
  - b. Explained clearly and conspicuously in a statement mailed to the borrower at the borrower's last known address within 30 days after assessing the fee, provided the servicer shall not be required to take any action in violation of the provisions of the federal bankruptcy code. The servicer shall not be required to send such a statement for a fee that either:
    1. Is otherwise included in a periodic statement sent to the borrower that meets the requirements of paragraphs (b), (c), and (d) of 12 C.F.R. § 1026.41.
    2. Results from a service that is affirmatively requested by the borrower, is paid for by the borrower at the time the service is provided, and is not charged to the borrower's loan account.
- (2) All amounts received by a servicer on a home loan at the address where the borrower has been instructed to make payments shall be accepted and credited, or treated as credited, within one business day of the date received, provided that the borrower has made the full contractual payment and has provided sufficient information to credit the account. If a servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date shall be credited no later than the due date. Provided, however, that if any payment is received and not credited, or treated as credited, the borrower shall be notified within 10 business days by mail at the borrower's last known address of the disposition of the payment, the reason the payment

was not credited, or treated as credited to the account, and any actions necessary by the borrower to make the loan current.

- (2a) The notification required by subdivision (2) of this section is not necessary if (i) the servicer complies with the terms of any agreement or plan made with the borrower and has applied and credited payments received in the manner required, and (ii) the servicer is applying and crediting payments to the borrower's account in compliance with all applicable State and federal laws, including bankruptcy laws, and if at least one of the following occurs:
  - a. The borrower has entered into a written loss mitigation, loan modification, or forbearance agreement with the servicer that itemizes all amounts due and specifies how payments will be applied and credited;
  - b. The borrower has elected to participate in an alternative payment plan, such as a biweekly payment plan, that specifies as part of a written agreement how payments will be applied and credited; or
  - c. The borrower is making payments pursuant to a bankruptcy plan.
- (3) Failure to charge the fee or provide the information within the allowable time and in the manner required under subdivision (1) of subsection (a) of this section constitutes a waiver of such fee.
- (4) All fees charged by a servicer must be otherwise permitted under applicable law and the contracts between the parties. Nothing herein is intended to permit the application of payments or method of charging interest which is less protective of the borrower than the contracts between the parties and other applicable law.
- (5) The obligations of mortgage servicers set forth in G.S. 53-244.110. (2007-351, s. 5; 2008-227, s. 1; 2008-228, s. 19; 2015-264, s. 43; 2017-10, s. 1.2.)

#### **§ 45-92. Obligation of servicer to handle escrow funds.**

Any servicer that exercises the authority to collect escrow amounts on a home loan held or to be held for the borrower for insurance, taxes, and other charges with respect to the property shall collect and make all payments from the escrow account, so as to ensure that no late penalties are assessed or other negative consequences result. The provisions of this section shall apply regardless of whether the loan is delinquent or in default unless the servicer has a reasonable basis to believe that recovery of these funds will not be possible or the loan is more than 90 days in default. (2007-351, s. 5.)

#### **§ 45-93. Borrower requests for information.**

The servicer shall make reasonable attempts to comply with a borrower's request for information about the home loan account and to respond to any dispute initiated by the borrower about the loan account, as provided in this section. The servicer shall maintain, until the home loan is paid in full, otherwise satisfied, or sold, written or electronic records of each written request for information regarding a dispute or error involving the borrower's account. Specifically, the servicer is required to do all of the following:

- (1) Provide a written statement to the borrower within 10 business days of receipt of a written request from the borrower that includes or otherwise enables the servicer to identify the name and account of the borrower and includes a statement that the account is or may be in error or otherwise provides sufficient

detail to the servicer regarding information sought by the borrower. The borrower is entitled to one such statement in any six-month period free of charge, and additional statements shall be provided if the borrower pays the servicer a reasonable charge for preparing and furnishing the statement not to exceed twenty-five dollars (\$25.00). The statement shall include the following information if requested:

- a. Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default.
- b. The current balance due on the loan, including the principal due, the amount of funds (if any) held in a suspense account, the amount of the escrow balance (if any) known to the servicer, and whether there are any escrow deficiencies or shortages known to the servicer.
- c. The identity, address, and other relevant information about the current holder, owner, or assignee of the loan.
- d. The telephone number and mailing address of a servicer representative with the information and authority to answer questions and resolve disputes.

(2) Provide the following information and/or documents within 25 business days of receipt of a written request from the borrower that includes or otherwise enables the servicer to identify the name and account of the borrower and includes a statement that the account is or may be in error or otherwise provides sufficient detail to the servicer regarding information sought by the borrower:

- a. A copy of the original note, or if unavailable, an affidavit of lost note.
- b. A statement that identifies and itemizes all fees and charges assessed under the loan transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the home loan including escrow account activity and suspense account activity, if any. The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the home loan for the entire two-year time period the servicer shall provide the information going back to the date on which the servicer began servicing the home loan. For purposes of this subsection, the date of the request for the information shall be presumed to be no later than 30 days from the date of the receipt of the request. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the loan, the servicer shall provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the loan up to the date of the request for the information. The borrower is entitled to one such statement in any six-month period free of charge. Additional statements shall be provided if the borrower pays the servicer a reasonable charge for preparing and furnishing the statement not to exceed fifty dollars (\$50.00).

- (3) Promptly correct errors relating to the allocation of payments, the statement of account, or the payoff balance identified in any notice from the borrower provided in accordance with subdivision (2) of this section, or discovered through the due diligence of the servicer or other means. (2007-351, s. 5.)

**§ 45-94. Remedies.**

In addition to any equitable remedies and any other remedies at law, any borrower injured by any violation of this Article may bring an action for recovery of actual damages, including reasonable attorneys' fees. The Commissioner of Banks, the Attorney General, or any party to a home loan may enforce the provisions of this section. With the exception of an action by the Commissioner of Banks or the Attorney General, at least 30 days before a borrower or a borrower's representative institutes a civil action for damages against a servicer for a violation of this Article, the borrower or a borrower's representative shall notify the servicer in writing of any claimed errors or disputes regarding the borrower's home loan that forms the basis of the civil action. The notice must be sent to the address as designated on any of the servicer's bills, statements, invoices, or other written communication, and must enable the servicer to identify the name and loan account of the borrower. For purposes of this section, notice shall not include a complaint or summons. Nothing in this section shall limit the rights of a borrower to enjoin a civil action, or make a counterclaim, cross-claim, or plead a defense in a civil action. A servicer will not be in violation of this Article if the servicer shows by a preponderance of evidence that:

- (1) The violation was not intentional or the result of bad faith; and
- (2) Within 30 days after discovering or being notified of an error, and prior to the institution of any legal action by the borrower against the servicer under this section, the servicer corrected the error and compensated the borrower for any fees or charges incurred by the borrower as a result of the violation. (2007-351, s. 5; 2008-228, s. 20; 2013-412, s. 8.)

**§ 45-95. Severability.**

The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. If any provision of this Article is declared to be inapplicable to any specific category, type, or kind of points and fees, the provisions of this Article shall nonetheless continue to apply with respect to all other points and fees. (2007-351, s. 5.)

**§ 45-96: Reserved for future codification purposes.**

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